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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,211	11/08/1999	EVA SIMMONS	000500-195	2334
21839	7590	02/02/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			KIDWELL, MICHELE M	
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3761

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/380,211

Applicant(s)

SIMMONS ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-25 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 24 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7 – 8 and 16 – 18 are rejected under 35 U.S.C. 102(e) as anticipated by Roe (US 5,607,760).

Regarding claims 7 and 18, Roe discloses an absorbent article with longitudinally extending side extremities (figure 3), an absorbent body (540) disposed between a liquid-impermeable bottom sheet (530) and a liquid-permeable upper sheet (520) and at least one longitudinally extending elastic liquid barrier (550) of essentially liquid-impervious material as set forth in col. 8, lines 50 – 56 through the incorporation of Dragoo (US 4,795,454) which discloses barrier made of essentially liquid-impervious material in col. 10, lines 54 – 57. Dragoo also discloses a barrier fasted to the upper or bottom sheet along or adjacent to a respective side edge extremity of the article (col. 4, lines 39 – 47) and having a free sealing edge facing towards a wearer as set forth in figure 2. Likewise, Roe discloses an article in which at least the sealing edge is treated with a non-adhesive hydrophobic sealing medium which will smear the abutment skin

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part and thereby increases a liquid-skin wetting angle when the article is donned as set forth in col. 10, lines 18 –21 and col. 25, lines 26 – 32.

Roe specifically discloses an article wherein petrolatum or mineral oil is applied to leg cuffs of a diaper. While Roe does not explicitly state that while in use the petrolatum or mineral oil will at least partly fill out any through penetrating pores, it is inherent that the petrolatum or mineral oil, when applied to the leg cuff that is intended to come into contact with the wearer's skin, will at least partly fill out any through penetrating pores. Roe states that pressure and friction from the wearer's weight and motion contribute to the transfer of the lotion from the article to the wearer, thereby inferring that when the article is donned, the medium will smear an abutment part of the wearer's skin.

With reference to claim 8, see the rejection of claim 7. Additionally, Roe discloses the article wherein the sealing edges are coated with a sealing medium in an amount sufficient to smear the abutment part as set forth in col. 25, lines 26 – 32.

With respect to claim 16, Roe discloses a sealing medium that is essentially rigid and viscous at room temperature and sufficiently fluid at body temperature to smear the skin of the wearer as set forth in col. 9, line 50 to col. 10, line 17.

As to claim 17, Roe discloses the sealing medium to be petrolatum or mineral oil as set forth in col. 15, lines 60 – 61.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 – 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,607,760).

As to claims 9 – 12, Roe discloses an article with the sealing medium applied in the claimed amounts as set forth in col. 24, lines 1 – 6.

The difference between Roe and claims 9 – 12 is the provision that the lotion composition is specifically applied to the leg cuffs.

It would have been obvious to one of ordinary skill in the art to modify the leg cuffs of Roe to employ petrolatum because Roe states that the lotion composition may be applied to any part of the diaper wherein it can come into contact with the wearer's skin, including the leg cuffs, as set forth in col. 25, lines 26 – 32.

The difference between Roe and claims 13 – 15 is the provision that the sealing medium gives a wetting angle above a certain degree.

Roe discloses the use of petroleum in col. 15, lines 60 – 61.

Because the applicant discloses that petroleum is a suitable sealing medium on page 14 of the specification, it can be reasonably assumed, is not inherent, that the petrolatum would provide a sealing member meeting the wetting angle requirements of the claimed invention.

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If not inherent, it would at least be obvious that the petrolatum does provide a sealing member with a wetting angle and determining the optimum or workable range of that wetting angle would require only ordinary skill in the art.

The difference between Roe and claim 19 is the provision that the sealing medium is provided in an amount that is sufficient to both partly fill out any through penetrating pores and to smear said abutment skin part.

Roe discloses that the sealing medium may be applied to any part of the diaper to smear an abutment skin part as set forth in col. 25, lines 26 – 32.

It is inherently disclosed that Roe provides a sufficient amount of sealing medium to partly fill out any through penetrating pores because Roe provides a sealing medium on a portion of the article that is to come into contact with the skin of the wearer. Roe discloses that pressure and friction from the wearer's weight contributes to the transferring of the sealing medium from the article to the skin (col. 25, lines 19 – 24), therefore, it is known that the sealing medium is provided on both the article and the skin and it is inherent that any sealing medium provided on the article in an attempt to transfer the medium from the article to the skin will at least partly fill out any through penetrating pores.

Claims 20 – 21, are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,607,760) and in further view of Kitaoka (US 5,342,342).

The difference between Roe and claim 20 is the provision that the absorbent article include an essentially liquid-impermeable top sheet which is intended to lie against a wearer and which includes elastic for shaping the article to the wearer's body,

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and includes apertures intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the top sheet.

Kitaoka teaches an absorbent article including an essentially liquid-impermeable top sheet (14) which is intended to lie against the wearer and which includes elastic for shaping the article to the wearer's body and includes an aperture intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the topsheet as set forth col. 2, lines 52 – 53 and figure 1.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Roe by employing an essentially liquid-impermeable top sheet which is intended to lie against a wearer and which includes elastic for shaping the article to the wearer's body, and includes an aperture intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the top sheet because the inclusion of such allows excretion to be reliably guided to an opening formed in the second topsheet without apprehension that the excretion might partially spread over the area of the second topsheet extending outside of the opening as taught by Kitaoka in col. 4, lines 22 – 28.

The examiner again notes that Roe provides the general concept of providing lotion on the elastic edges that come into contact with the wearer's skin in order to alleviate chafing and provide improved containment. Therefore, it would have been

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obvious to one of ordinary skill in the art to coat any elastic member that comes into contact with the wearer's skin with the composition as taught by Roe.

As to claim 21, see the rejection of claim 19.

Response to Arguments

Applicant's arguments filed October 21, 2003 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Roe does not teach a hydrophobic sealing medium, the examiner disagrees. Petrolatum is a typically hydrophobic medium with a wetting angle of 100°. The applicant's specification supports the fact that the petrolatum is a suitable medium for increasing the liquid-skin wetting angle. While Roe does teach the addition of a surfactant when using the petrolatum, Roe also discloses the addition of the surfactant at amounts as low as 0.1% (col. 23, lines 10 – 13) which are unlikely to affect the increase in the liquid-skin wetting angle caused by the addition of petrolatum to the skin.

Additionally, the examiner contends that Roe discloses the use of the hydrophilic surfactant with the petrolatum with respect to its use in the diaper topsheet. The use of the lotion with respect to the leg cuffs (col. 25, lines 26 – 32) does not require the use of the optional hydrophilic surfactant. To render the lotion composition used on the leg cuffs hydrophilic would teach away from the basic principle of the leg cuff to prevent leakage. If one were to treat the leg cuffs with a hydrophilic composition, the

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composition would promote the rapid transfer of fluids through the leg cuffs and result in undesirable leakage.

In any event, when the leg cuff of Roe is treated with the lotion composition and the article is brought into contact with the wearer, the sealing medium will smear the wearer's skin. As a result, the liquid-skin wetting angle will increase because the normal 74° wetting angle of the skin is now subjected to the 100° wetting angle of the petrolatum which allows the liquid-skin wetting angle to increase as supported by page of the applicant's specification.

Further, the examiner would like to point out that the applicant's specification states that having dirty skin vs. clean skin also affects the wetting angle of the skin. What is to say that the diaper of Roe in use (i.e. a diaper after waste has been emitted onto the diaper) vs. a clean diaper not in use will not meet the requirements of the claimed invention?

Even further, the examiner notes that Roe discloses the use of mineral oil, which is a hydrophobic sealing medium that will not require the addition of any surfactant.

Allowable Subject Matter

Claims 22 – 25 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the overall claimed combination of an absorbent article wherein only a free sealing edge or elastically puckered sealing edges that surround an aperture intended to lie in register with an anus and urethra orifice of a wearer are treated with a non-

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adhesive sealing medium has neither been anticipated nor rendered obvious by the prior art of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
January 21, 2004


GLENN K. DAWSON
PRIMARY EXAMINER